



PO Box 1989  
Kingsport, TN 37662

Phone: 423.229.8200  
or 800.999.2328

June 8, 2018

Chairman Ajit Pai  
Federal Communications Commission  
Office of the Secretary  
445 12<sup>th</sup> Street SW  
Washington, DC 20554

Re: Telephone Consumer Protection Act – Proposed Rule for Reassigned Number Database  
GC Docket No. 17-59

Dear Mr. Chairman:

Eastman Credit Union ("ECU") is a federally insured Tennessee state chartered credit union. ECU is the largest credit union in Tennessee and serves over 194,000 members with branches in Tennessee, Texas, and Virginia. ECU is commenting on the Proposed Rule for the creation of a database for reassigned telephone numbers to reduce the potential liability for callers under the Telephone Consumer Protection Act ("TCPA").

ECU does not support the creation of a reassigned number database but, instead, urges the FCC to adopt realistic rules and regulations under the TCPA that balance the legitimate needs of businesses with the privacy concerns of consumers.

## **I. Reassigned Telephone Number Database**

### **a. Maintenance**

The FCC asked for comments addressing who should be responsible for maintaining the database. If the database is created, ECU suggests that one organization or governmental agency be responsible for maintenance and security of the information submitted. Otherwise, there will be no uniform standards of submission, accuracy, integrity, user access, or expectation of consumer privacy.

If consumers will supply their own information for the database, ECU suggests that they be required to certify the accuracy of the information submitted. To add another layer of protection for database users, consumers who utilize the database should agree to hold harmless users who, in good faith, access and rely on the information submitted. If service providers, or other third parties, will be expected to supply the information, they should be required to first obtain consent of the consumer to whom the information pertains to avoid privacy violations for unauthorized access to personal information.

### **b. Timeliness**

The FCC also asked for comments addressing how timely the information in the database must be in order to be effective. It is ECU's opinion that the database must be updated daily, if not in realtime, to ensure the most current and accurate information. Otherwise, good faith users of the database will rely on stale information and place calls to unintended parties subjecting themselves to potential liability under the TCPA. If the database is not updated daily or in realtime, the safe harbor should be crafted in such a

way as to cover users who verify information at any time prior to placing calls regardless of when the database is updated.

Furthermore, the FCC should consider how frequently it expects businesses to access the database in order to receive the safe harbor protection. ECU has over 194,000 members. Some of those members have multiple telephone numbers. It is entirely unreasonable to expect ECU, and other similarly situated businesses, to verify the ownership of a telephone number prior to placing each and every telephone call it makes each day.

c. Fails to Address Actions of Bad Actors

The creation of this database will impose a tremendous burden on legitimate businesses, while doing nothing to address the problem of large scale and illegal robocallers. The bad business practices of these bad actors indicate they are not likely to follow new rules and regulations, which only results in more regulatory burden for legitimate businesses acting in good faith.

At the end of the Notice of Proposed Rulemaking, a Statement from Commissioner Mignon Clyburn was included that said "According to the latest data from the YouMail Robocall Index, 2.5 billion of those robocalls were made just last month in the United States. Equally remarkable is that four telephone numbers are responsible for more than 68 million of these calls." The FCC should focus its efforts on these bad actors first, instead of increasing the compliance burden already in existence.

## II. Alternative Approaches

a. Restoration of the Established Business Relationship Exemption

ECU supports the restoration of the established business relationship exemption for both residential and cellular telephone numbers. Historically, the FCC recognized that such calls to residential numbers do not infringe on consumers' privacy interests. Consumers expect to have ongoing dialogue with companies with which they have business dealings and financial interests. The majority of Americans increasingly utilize cellphones as their primary method of communication quickly reducing residential lines to an outmoded convention. The FCC should modernize the TCPA to reflect this shift in communication and dissolve the antiquated distinction between calls made to residential lines and calls made to cell phones. In addition to modernizing the TCPA, the restoration of this exemption would provide businesses a safe harbor from liability without the need of a reassigned number database.

b. Contract Exemption

ECU urges the FCC to consider creating an exemption, in addition to the Established Business Relationship Exemption, for consent given in contract. Credit unions enter into agreements with consumers to establish membership, make loans, open deposit accounts and offer a variety of other financial products and services. Credit unions must be able to communicate quickly and effectively with their members without fear of litigation. So long as the methods of communication are clearly set forth in a contract,



the provisions of the contract should be binding and upheld and exempt from the TCPA's onerous consent requirements.

### III. Definition of "Autodialer" Must be Resolved

The original intent of the TCPA was to protect consumers against unwanted calls and unsolicited advertisements sent by "autodialers," artificial or recorded voice messages, and fax machines while permitting legitimate telemarketing practices. To meet that end, Congress defined "autodialer" as "equipment which has the capacity (A) to store or produce telephone numbers to be called, using a random or sequential number generator; and (B) to dial such numbers." Congress made no mention of equipment having a future or theoretical ability; only what the equipment is able to do as currently configured. To adopt a different definition would potentially open every sophisticated communication system to the scope of the TCPA.

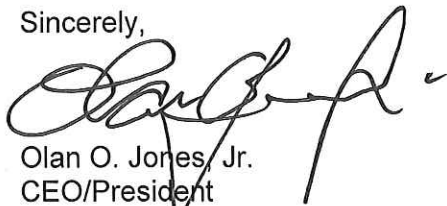
In 2015, the FCC expanded the definition of "autodialer" by stating that the capacity of an "autodialer" is not limited to its current configuration but also includes potential functionalities. Equipment that has both the *present* and *potential* ability to dial random and sequential numbers now falls within the purview of the TCPA. The FCC's 2015 definition has since been vacated by the D.C. Circuit in *ACA International v. Federal Communications Commission*.

Going forward, ECU urges the FCC to draft a definition of "autodialer" that excludes telephone calls made with sufficient human intervention regardless of the current or potential capacity of the equipment. In so doing, the FCC will have removed the need to create safe harbors, reassigned number databases, and exemptions. The TCPA's original intent to protect consumers against unwanted robocalls and unsolicited advertisements sent by "autodialers" will be sufficiently achieved.

### IV. Conclusion

For the reasons stated above, ECU does not support the creation of a reassigned number database. Doing so simply increases the regulatory burden of legitimate businesses and fails to address the true problem and capture the bad actors for which the Telephone Consumer Protection Act was enacted.

Sincerely,



Olan O. Jones, Jr.  
CEO/President  
Eastman Credit Union